

July 29, 2014

Ms. Debra Franklin  
1117 Engleberth Rd.  
Baltimore, MD 21221

Re: 1117 Engleberth Rd. 21221  
Critical Area Administrative Variance  
Tracking No. 06-14-1844

Dear Ms. Franklin:

The Department of Environmental Protection and Sustainability (EPS) has completed a review of the variance request for the referenced property. The property is located within a Limited Development Area in the Chesapeake Bay Critical Area. The request proposes impacts to the Critical Area buffer for constructing an attached pervious deck onto the existing dwelling and for the continued use of the 100-foot buffer for an existing house, driveway, shed and yard. The required buffer is 100-feet measured off mean high water and from the tidal wetlands on this property and the property to the north. Due to highly erodible soils and slopes greater than 5%, the required buffer area expands by 800 square feet to the west. The required buffer covers the majority of the property. Scattered trees exist on the property, but there is no forest. Wetlands exist on the northeastern corner of the site.

The Director of EPS may grant a variance to the Chesapeake Bay Critical Area regulations in accordance with regulations adopted by the Critical Area Commission concerning variances as set forth in COMAR 27.01.11. There are five (5) criteria listed in COMAR 27.01.11 that shall be used to evaluate the variance request. All five of the criteria must be met in order to approve the variance.

The first criterion requires that special conditions exist that are peculiar to the land or structure, and that literal enforcement of the regulations would result in unwarranted hardship. Special conditions do exist that are peculiar to this site, and literal enforcement of the regulations would result in an unwarranted hardship. The gapped board open deck with steps to grade has been located on the north side of the dwelling greater than 25-feet from the tidal wetland, and no closer waterward than the existing dwelling. The required Critical Area buffer covers the majority of the property, and literal enforcement of the regulations would not allow for construction of the deck, or the continued existing uses on this grandfathered lot. Therefore, the first criterion has been met.

The second criterion requires that a literal enforcement of the regulations would deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area. The uses proposed in this application are enjoyed by owners of other residential properties with similar site constraints. Literal enforcement of the regulations would deprive the owners from constructing the deck, and from continued existing use of the house, driveway, shed, and yard. Therefore, the second criterion has been met.

The third criterion requires that granting of a variance will not confer upon an applicant any special privilege that would be denied to other lands or structures within the Critical Area. Impacts to the Critical Area buffer for continued existing residential uses, and the construction of an open deck on the referenced property would not be denied to similar properties with similar constraints in the Critical Area. Therefore, the third criterion has been met.

The fourth criterion requires that a variance is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or non-conforming, on any neighboring property. No work has taken place on the property, no changes have occurred in the use of the property, and this variance request is not the result of existing or proposed uses on any neighboring properties. Therefore, the fourth criterion is met.

The fifth criterion requires that granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area regulations. The impacts to the buffer have been minimized to the extent possible for the construction of a practical open deck, and for continued existing residential uses. The required buffer area will be planted with native trees and shrubs to reduce water quality impacts. Therefore, the buffer impacts to allow for the deck, and for the continued existing residential uses will result in minimal adverse impacts to plants or wildlife. Granting of this variance will be in harmony with the spirit and intent of the Critical Area regulations, and the fifth criterion can be met with mitigation.

Based upon our review, this Department finds that the first four of the above criteria have been met, and that the fifth criterion can be met by planting native vegetation on-site. Therefore, the requested variance is hereby approved in accordance with Section 33-2-205 of the Baltimore County Code with the following conditions:

1. The following note must appear on all plans associated with this project:

"On July 29, 2014 a variance was granted by the Baltimore County Department of Environmental Protection and Sustainability from

Baltimore County Code Article 33, Title 2 Chesapeake Bay Critical Areas Protection to allow for impact to the Critical Area buffer for construction of a gapped board open deck with steps to grade, and continued existing residential uses. Conditions were placed on this variance to reduce water quality impacts."

2. Mitigation for approved impacts shall be provided as follows:
  - a. The 324 square feet of new permanent buffer impacts shall be mitigated at a rate of 3:1 resulting in a 972 square foot buffer mitigation requirement. This mitigation shall be met by planting within the Critical Area buffer on-site prior to May 1, 2015. Plants must be spread out through the entire buffer area.
  - b. Buffer establishment must be provided for the 64 square feet of new lot coverage (steps) within the Critical Area buffer. Two native deciduous trees at least 5-feet tall must be planted on-site within the buffer prior to May 1, 2015.
3. A minor buffer management plan outlining the required mitigation must be submitted to EPS for review. The enclosed Critical Area Buffer assistance guide provides information on plan requirements.
4. Upon approval of the minor buffer management plan by this Department, a security of no less than \$0.25 per square foot of planting area shall be submitted to Baltimore County with an Environmental Agreement. The security must be submitted prior to any permit approval. The planting shall be completed prior to May 1, 2015. The plantings must meet a 100% survivability requirement for two years following the approval of the initial planting by this office.
5. Critical Area "Do Not Disturb" signs shall be installed at the buffer limits, and as shown on the approved buffer management plan. This requirement must be completed prior to permit approval. This note must be added to the buffer management plan (see enclosure for sign specifications).

It is the intent of this Department to approve this variance subject to the above conditions. Changes in site layout may require submittal of revised plans and an amended variance request. Please be advised that Baltimore County may not issue a permit for the activity that was the subject of the variance application until 30 days after variance approval, pursuant to Natural Resources Article § 8-1808(d)(6)(ii).

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The property owner(s) must sign the statement at the end of this letter, and then return the signed letter to this Department. Failure to return a signed copy of this letter may result in delays in processing of permits or other development plans for the subject property, and/or may render this variance null and void.

If you have questions regarding this project, please contact Paul Dennis at 410-887-3980.

Sincerely,

Vincent J. Gardina  
Director

VJG: pad

Enclosures: A- Sign Specifications, B-Critical Area Buffer Assistance Guide

c: Ms. Julie Roberts, Critical Area Commission

I/We have read and agree to implement the above requirements to bring my/our property into compliance with Baltimore County Code Article 33. Environmental Protection And Sustainability, Title 2 Chesapeake Bay Critical Areas Protection.

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Property Owner Signature(s)

Date

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Property Owner Printed Name(s)